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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/997,458	11/30/2001	Carol Ivash Gabele	AUS920000651US1	6180
28722	7590	10/07/2005	EXAMINER	
BRACEWELL & PATTERSON, L.L.P.			DAY, HERNG DER	
P.O. BOX 969			ART UNIT	
AUSTIN, TX 78767-0969			PAPER NUMBER	
			2128	

DATE MAILED: 10/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/997,458

**Applicant(s)**

GABELE ET AL.

**Examiner**

Herng-der Day

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 November 2001.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-18 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 11/30/01, 6/27/05.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_

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### **DETAILED ACTION**

1. Claims 1-18 have been examined and claims 1-18 have been rejected.

#### ***Drawings***

2. The drawings are objected to for the following reasons. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the Examiner, the Applicants will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2-1. Figures 3A-7 and 8C-14C should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g).

2-2. FIG. 16D, as described at page 92, cannot be located.

#### ***Claim Objections***

3. Claims 6, 12, and 18 are objected to because of the following informalities. Appropriate correction is required.

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3-1. Regarding claim 6, “delivering said harvest event to said instrumentation server”, as described in line 5 of the claim. (Emphasis added.)

3-2. Regarding claim 12, “delivering said harvest event to said instrumentation server”, as described in line 4 of the claim. (Emphasis added.)

3-3. Regarding claim 18, “delivering said harvest event to said instrumentation server”, as described in line 4 of the claim. (Emphasis added.)

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 4, 10, and 16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5-1. Claim 4 recites the limitation “said locally recorded harvest event” in line 4 of the claim. There is insufficient antecedent basis for this limitation in the claim.

5-2. Claim 10 recites the limitation “said locally recorded harvest event” in line 3 of the claim. There is insufficient antecedent basis for this limitation in the claim.

5-3. Claim 16 recites the limitation “said locally recorded harvest event” in line 3 of the claim. There is insufficient antecedent basis for this limitation in the claim.

### ***Recommendations***

6. Claim 5 recites the limitation "said testcase server" in lines 1-2 and 9 of the claim. For clarification purpose, the Examiner suggests that "said testcase server" be replaced with "said harvest testcase server".

7. Claim 6 recites the limitation "said testcase server" in lines 1-2 of the claim. For clarification purpose, the Examiner suggests that "said testcase server" be replaced with "said harvest testcase server".

8. Claim 11 recites the limitation "said testcase server" in line 8 of the claim. For clarification purpose, the Examiner suggests that "said testcase server" be replaced with "said harvest testcase server".

9. Claim 17 recites the limitation "said testcase server" in line 8 of the claim. For clarification purpose, the Examiner suggests that "said testcase server" be replaced with "said harvest testcase server".

### ***Double Patenting***

10. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

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A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

11. Claims 1, 7, and 13 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 2, 8, and 14 of copending Application No. 09/997,845. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are all directed to comparing triggered harvest event and delivering testcase to harvest testcase server based on the comparing.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Claim Rejections - 35 USC § 101***

12. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

13. Claims 13-18 are rejected under 35 U.S.C. 101 because the inventions as disclosed in claims are directed to non-statutory subject matter.

13-1. Regarding claims 13-18, Applicants merely claim program instructions, i.e., software per se, which is non-statutory for failing to be in one of the categories of invention.

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13-2. The Examiner acknowledges that even though the claims are presently considered non-statutory they are additionally rejected below over the prior art. The Examiner assumes the Applicants will amend the claims to overcome the 101 rejections and thus make the claims statutory.

***Claim Rejections - 35 USC § 103***

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bargh et al., U.S. Patent 6,195,627 B1 issued February 27, 2001, in view of IBM Technical Disclosure Bulletin, "Automated Pervasive Device Testing Tool", March 1, 2000.

15-1. Regarding claim 1, Bargh et al. disclose a method for minimizing redundancy in collected harvest event testcases from a batch simulation farm which includes a harvest testcase server that collects simulation data for a simulation model from at least one simulation client, said method comprising:

executing a testcase on said simulation model within a simulation client (performing a simulation test on said simulation model, column 26, lines 17-18);

responsive to said testcase triggering a harvest event, comparing said harvest event with a list of harvest events that have previously been triggered within said simulation model (record a harvest event, column 14, lines 31-37).

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Bargh et al. fail to expressly disclose responsive to determining that said harvest event has not been previously triggered within said simulation model, delivering said testcase to said harvest testcase server.

IBM Technical Disclosure Bulletin discloses a testing tool has been designed to be an automated test server for pervasive devices to allow multiple users to develop and run multiple tests on multiple devices in an easy to use manner. Tests can be grouped into test buckets to allow for tests to be executed and tracked in an automated fashion. The user interface allows the user to see the results of test execution and shows a list of links to the logs of the tests which were executed.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Bargh et al. to incorporate the teachings of IBM Technical Disclosure Bulletin to obtain the invention as specified in claim 1 because automated test server allows multiple users to develop and run multiple tests on multiple devices in an easy to use manner.

**15-2.** Regarding claim 2, Bargh et al. further disclose said simulation batch farm includes an instrumentation server that includes a network harvest hit table which records harvest events that have been triggered during testcase simulation of said simulation model, said method further comprising delivering a copy of said network harvest hit table as a local harvest hit table to said at least one simulation client (record a harvest event, column 14, lines 31-37).

**15-3.** Regarding claim 3, Bargh et al. further disclose the triggering of said harvest event results in setting at least one harvest event flag within said simulation model, said method further comprising:



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for each testcase executed on said simulation model: comparing the setting of said at least one harvest event flag with said local harvest hit table to determine whether or not said harvest event has previously been triggered (flags 423, column 14, lines 31-37).

**15-4.** Regarding claim 4, Bargh et al. further disclose said comparing the setting of said at least one harvest event flag with said local harvest hit table is followed by:

responsive to the absence of said harvest event within said local harvest hit table, receiving an indication of said locally recorded harvest event within said instrumentation server (detect any desired number of harvest events, column 13, lines 46-53);

comparing the received harvest event with said network harvest hit table to determine whether an interim occurrence of said harvest event has been recorded within said network harvest hit table (register is utilized to record at which point in the simulation run the event occurred, column 13, line 53-55); and

responsive only to said network harvest hit table not including said received harvest event, recording said harvest event within said network harvest hit table (record a harvest event, column 14, lines 31-37).

**15-5.** Regarding claim 5, Bargh et al. further disclose said delivering said testcase to said testcase server is preceded by:

responsive to determining that said harvest event has not been previously triggered within said simulation model in accordance with said local harvest hit table, determining whether or not an interim occurrence of said harvest event has been recorded in said network harvest hit table (register is utilized to record at which point in the simulation run the event occurred, column 13, line 53-55); and

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responsive only to no interim recordation of said harvest event within said network harvest hit table:

delivering said testcase to said testcase server (IBM, test server); and  
updating said network harvest hit table to include said harvest event (record a harvest event, column 14, lines 31-37).

**15-6.** Regarding claim 6, Bargh et al. further disclose said delivering said testcase to said testcase server is preceded by:

responsive to determining that said harvest event has not been previously triggered within said simulation model in accordance with said local harvest hit table, delivering said harvest event to said instrumentation server (record a harvest event, column 14, lines 31-37); and  
within said instrumentation server:

determining whether or not an interim occurrence of said harvest event has occurred in accordance with said network harvest hit table (register is utilized to record at which point in the simulation run the event occurred, column 13, line 53-55); and

responsive only to no interim recordation of said harvest event within said network harvest hit table, updating said network harvest hit table to include said harvest event (record a harvest event, column 14, lines 31-37).

**15-7.** Regarding claims 7-12, these system claims include same method limitations as in claims 1-6 and are unpatentable using the same analysis of claims 1-6.

**15-8.** Regarding claims 13-18, these computer program product claims include same method limitations as in claims 1-6 and are unpatentable using the same analysis of claims 1-6.

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**Conclusion**

16. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure.

Reference to Bowman-Amuah, U.S. Patent 6,640,244 issued October 28, 2003, and filed August 31, 1999, is cited as disclosing a method for batching logical requests.

17. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Herng-der Day whose telephone number is (571) 272-3777. The Examiner can normally be reached on 9:00 - 17:30.

Any inquiry of a general nature or relating to the status of this application should be directed to the TC 2100 Group receptionist: (571) 272-2100.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Jean R. Homere can be reached on (571) 272-3780. The fax phone numbers for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Herng-der Day  
October 3, 2005 H.D.

Thay Phan  
Thai Phan  
Patent Examiner  
Au: 2128